

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

_____	*	
Billy O'Bryan	*	
	*	
Plaintiff	*	
	*	
v.	*	Civil Action No.: 1:13-cv-00170
	*	
EBSCO TeleServices, LLC	*	
	*	
Defendant	*	
_____	*	

**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

NOW COMES Defendant, EBSCO TeleServices, LLC, by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and moves to dismiss stating as follows:

1. Plaintiff seeks statutory damages, treble damages, and injunctive relief because he claims that EBSCO committed "negligent" and "knowing and/or willful" violations of the Telephone Consumer Protection Act of 1991. See Doc. No. 1, ¶¶ 7, 16, 19, 21, 24.

2. Plaintiff's complaint contains nothing but legal "labels and conclusions" and a "formulaic recitation of the elements of a cause of action" for alleged violations of the TCPA. Ashcroft, et al v. Iqbal, et al, 556 U.S. 662, 678 (U.S. 2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (U.S. 2007)).

3. In short, Plaintiff's complaint amounts to nothing but "an unadorned, the-defendant-unlawfully harmed me accusation," Ashcroft, 556 U.S. at 678, and thus does not comply with the Federal Rules' mandate that Plaintiff plead "a short and plain statement of the claim showing that [he] is entitled to relief." Fed. R. Civ. P. 8(a)(2).

4. Accordingly, Plaintiff's complaint fails "to state a claim upon which relief can be granted" and EBSCO moves to dismiss. Fed. R. Civ. P. 12(b)(6); see, e.g., Hanley, et al v. Green Tree Servicing, et al, 2013 U.S. Dist. LEXIS 42533, \*10 (N.D. Ill. 2013) (granting 12(b)(6) motion in TCPA case where plaintiff offered "wholly inadequate complaint in which next to nothing is pleaded.")

5. EBSCO explains its entitlement to dismissal in the attached memorandum of law. See L.R. 7.1(a)(2). EBSCO did not seek Plaintiff's "concurrence in the relief sought" because this Motion is dispositive. See L.R. 7.1(c).

WHEREFORE, EBSCO respectfully requests, for the above reasons and for the reasons set forth in the attached memorandum of law, that this Court:

- A. Grant this Motion; and
- B. Dismiss Plaintiff's case.

Respectfully submitted,  
**EBSCO TELESERVICES, LLC**  
By and through its Attorneys,  
WADLEIGH, STARR & PETERS, P.L.L.C.

Date: June 27, 2013

By: /s/ Marc R. Scheer  
Marc R. Scheer, NHBA#2266  
Joseph G. Mattson, NHBA#19287  
95 Market Street  
Manchester, NH 03101  
(603) 669-4140

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has, this date, been forwarded to James D. Kelly, Esquire via ECF.

/s/ Marc R. Scheer  
Marc R. Scheer